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April 10, 1996

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M. Street, N.W., Room 222  
Washington, D.C. 20554

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Re: Preemption of Nongovernmental Restrictions on Satellite Earth Stations,  
IB Docket No.95-59

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

We write in response to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter, in addition to this original.

We represent clients in the commercial and residential real estate business - clients who in together represent millions of square feet of commercial property, and tens of thousands of residential units.

Our clients have invested their hearts, souls and fortunes into properties ranging from 50-story office buildings, and hundreds of thousands of square feet of industrial and retail space, and 10,000+ residential portfolios, to one-story office buildings, small industrial and strip shopping centers, and four-unit apartment buildings. Many of our client's projects fall within the definition of a "small business", i.e., one with an annual gross revenue of under \$5,000,000 per year.

### Property Rights

Our clients have certain property rights, rights which induced them into investing millions of dollars in their various projects, and rights which must be protected if we are to continue to have a reliable and predictable market, and legal environment that will *encourage* private investment and entrepreneurial efforts, and not discourage it. It is imperative that our clients retain the authority to control the use of their property, for several reasons.

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect our clients, and needlessly raise additional legal issues. We question whether the Commission has the authority to require our clients to allow the physical invasion of their property in this way.

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### **Marketability**

The FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic considerations trivial -- the appearance of a building directly affects its value to the business and general community, and therefore its marketability.

People generally prefer to live and work in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of units would not be appealing to present and future tenants. Thus, aesthetic considerations are actually economic considerations.

### **Structural and Safety Conditions**

The indiscriminate placement of antennas on the exterior of our clients' buildings can also create serious structural hazards. For instance, there will be structural strain created by the weight and wind resistance of antennas installed on balcony railings. Exterior wall-mounted antennas will require drilled holes, create opportunities for water seepage into the structure, structural deficiencies, corrosion of metal mountings, and weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities can create serious safety hazards to neighbors and passersby, and new maintenance and repair costs that our clients will have to pay.

### **Tenant Frustration**

The technical limitations of satellite technology will create management problems because there is no way to guarantee that all tenants will be able to receive all services. For example, when tenants on the south side of a building cannot receive the signals that tenants on the north side can, because there is no place to position an antenna to receive the signal, our clients will have to deal with the complaints. They will be powerless to change the laws of physics to satisfy the tenants, and they will suffer increased costs as angry tenants and tenants place additional demands on management or move to other buildings.

### **Conclusion**

The American free enterprise system and open competition and market forces have served us well for hundreds of years, and taken us from the era of the town crier to the dawn of a space-based information age. Our clients are perfectly capable of responding to their tenants' requirements in a free system that requires them to develop the means to balance all the competing business and market forces.

We urge the FCC to avoid interfering in our clients' business relationships with their tenants. All of the potential problems we cite will affect their bottom line and their property rights.

Thank you for your attention to our concerns.

Very truly yours,

  
Jeffrey R. Mazor, Esq.

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